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DuaneMorris®

FIRM and AFFILIATE OFFICES

DAVID J. WOLFSOHN
DIRECT DIAL: +1 215 979 1866
PERSONAL FAX: +1 215 689 2739
E-MAIL: DJWolfsohn@duanemorris.com

www.duanemorris.com

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January 10, 2020

VIA CM/ECF

The Honorable Sarah Netburn
United States Magistrate Judge
United States District Court
for the Southern District of New York
Thurgood Marshall Courthouse
40 Foley Square
New York, NY 10007

Re: *The Phillies v. Harrison/Erickson, Inc., et al.*, C.A. No. 19-7239-VM-SN

Dear Judge Netburn:

Pursuant to the Court's November 20, 2019 order, this is the parties' joint letter informing the Court about the status of discovery in the above-referenced matter.

Document Production. The Phillies has produced 24,204 pages of documents to Harrison/Erickson. Harrison/Erickson have produced 2,606 pages of documents to The Phillies. The Phillies believes it is substantially complete with document production, except for a set of Phanatic appearance contracts that will be produced next week, and the possible exception of future updates and additional documents that defendants may request. Harrison/Erickson have requested additional information and a meet and confer call concerning the Phillies' searches of electronically stored information ("ESI"). Harrison/Erickson have also raised questions concerning some of the Phillies' discovery responses, as discussed below. The parties hope to avoid any need to burden the Court with any disputes.

Additionally, Harrison/Erickson are reviewing more than 10,000 documents collected during searches of their ESI, and will produce them on a rolling basis. Harrison/Erickson will aim to complete this process by January 24, 2020.

Joint Request for Extension of Fact Discovery by One Month. The parties have begun scheduling depositions. To accommodate the witnesses' and counsel's schedules, the parties jointly request that the time for completing fact discovery be extended from the current deadline

DUANE MORRIS LLP

30 SOUTH 17TH STREET PHILADELPHIA, PA 19103-4196
11810986.1

PHONE: +1 215 979 1000 FAX: +1 215 979 1020

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of February 7, 2020 one month to March 9, 2020. All other deadlines—including the completion of expert discovery by Tuesday, April 28, 2020—would remain the same. The parties will submit – per Your Honor’s Individual Practices – a short letter motion requesting the extension.

Outstanding Discovery Disputes.

Plaintiff’s Issues. Defendants have noticed and/or subpoenaed nineteen depositions, including what plaintiff’s counsel believes are overly broad and improper Rule 30(b)(6) deposition notices/subpoenas that seek irrelevant information and/or The Phillies’ legal positions in the case. Although defense counsel had vaguely alluded to a few of these notices and subpoenas in a meet and confer on Tuesday, Plaintiff’s counsel was only able to review these notices this morning and has therefore not had the chance to meet and confer with defense counsel about all the issues raised by these notices, including the location of depositions and depositions of persons who have no information relevant to the parties’ claims or defenses. Plaintiff’s counsel will attempt to schedule a meet and confer at the earliest available opportunity and hopefully be able to avoid burdening the Court with a motion for a protective order.

Defendants’ Issues.

Harrison/Erickson served deposition notices and subpoenas for the following depositions: (i) seven current and former Phillies’ employees identified by the Phillies’ in its discovery responses as having knowledge relevant to the case, (ii) Major League Baseball, relating to derivative and other rights concerning the Phanatic as set forth in the Phillies’ discovery responses to date, (iii) Rule 30(b)(6) deposition witnesses to be designated by the Phillies regarding various topics relevant to this case, and (iv) ESI custodians from whom the Phillies collected documents. Harrison/Erickson have told the Phillies that they may withdraw some of the deposition notices/subpoenas after completing their review of the Phillies’ document production. These topics, among others, were discussed at some length by counsel for the respective parties, at an extensive meet and confer that took place on January 7, 2020, at the request of counsel for Harrison/ Erickson. While Harrison /Erickson believe their deposition notices and subpoenas seek the deposition of persons with information plainly relevant to the issues raised by the Phillies in this case, and that the location issue should be easily resolved, we will continue to meet and confer with counsel for the Phillies and hope to resolve any deposition issues without needing court intervention.

Also, Harrison/Erickson have concerns regarding the Phillies’ positions on the documents and information it has produced to date. For example: (i) the Phillies’ responses and objections sometimes state that the Phillies will only produce “representative” documents on key topics such as documents related to authorship/ownership of the Phanatic and licensing agreements, (ii) the Phillies do not appear to have produced all relevant information concerning the 399 “derivative works” that they recently identified as being the subject of the Phillies’ fifth cause of action, and (iii) the Phillies do not appear to have produced any information quantifying the amount of the alleged damages they are seeking in the seventh and eighth claims of the

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complaint. At this point, counsel for Harrison/Erickson will continue to meet and confer with the Phillies to try to resolve these and other open discovery issues without having to burden the Court with motion practice.

Respectfully,

DUANE MORRIS LLP

MITCHELL SILBERBERG & KNUPP LLP

/s/ David J. Wolfsohn

David J. Wolfsohn (*admitted pro hac vice*)
30 S. 17th Street
Philadelphia, PA 19103
Tel: (215) 979-1000
Fax: (215) 979-1020

/s/ Paul D. Montclare

Paul D. Montclare
437 Madison Avenue, 25th Floor
New York, NY 10022
Tel: (212) 509-3900
Fax: (212) 509-7239

*Attorneys for Plaintiff,
The Phillies*

*Attorneys for Defendants,
Harrison/Erickson, Incorporated, Harrison
Erickson, Wayde Harrison, and Bonnie
Erickson*

DJW/kah

cc: Leo M. Lichtman, Esq.
Elaine Nguyen, Esq.
J. Matthew Williams, Esq.
Tyler R. Marandola, Esq.
Kendra C. Oxholm, Esq.